

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34413-DDO

Chapter 7

Bart I. Hazlet and Sang T. Tran,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Michael J. Iannacone, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **9:30 am** on **Wednesday, October 13, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Friday, October 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, October 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on July 30, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 1999 Volvo V70, vehicle identification number YV1LV5603X2587020 and 1995 Isuzu Rodeo, vehicle identification number 4S2CM58V3S4372981 (collectively, the "Vehicle").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of July through August 2004 totaling \$1,280.40 plus late charges, have not been made by the Debtor(s). Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$13,070.13 as of the date hereof and the schedules indicate the Value of the Volvo is \$12,675.00.

10. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

11. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

12. If testimony is necessary as to any facts relevant to this motion, A. Hansen, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

13. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Financial Acceptance will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 20, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Bart I Hazlett and Sang T. Tran,

Bky. No. 04-34413-DDO

Debtor(s).

Affidavit

I, Andy Hansen, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

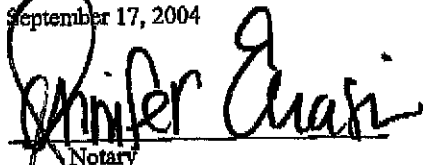
1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):
1995 Isuzu Rodeo VIN# 4S2CM58V3S4372981 and 1999 Volvo V70 VIN# YV11V5603X2587020.
2. \$13,070.13 is the outstanding balance under the contract.
3. \$1,280.40 is the amount of the existing delinquency under the contract.
4. \$21,073.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

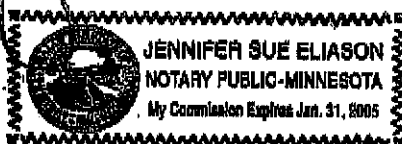
Further your affiant sayeth not.

Dated: 9/17/200


Andy Hansen
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 17, 2004


Notary



NOTE AND SECURITY AGREEMENT (including Loan Statement)

IDENTIFICATION OF PARTIES: Except where we indicate otherwise, we use the words you and your and anyone else who signs this Note and Security Agreement. The words we, us, and our refer to the C
YOUR ACCOUNT IS ASSUMED TO BE THE CREDITOR SHOWN BELOW
WELLS FARGO FINANCIAL ACCEPTANCE, INC.
8120 PENN AVE S. STE. 288
BLOOMINGTON, MN 55401

0*

0*

Account Number 37883081	Type 0	Borrower (Name and Address) HAZLETT, SALLY D. 4841 FRANCE AVE S APT 4 MINNEAPOLIS, MN 554101858	Address and Borrower Program BART HAZLETT AND SANG TRAN 2281 DOWELL AVE ST PAUL, MN 55108
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Date of Loan	First Payment Due Date	Other Same Day of Each Month	First Payment Due Date	First Payment	Other Payments	Number of Monthly Payments
08/05/03	08/17/03		08/17/06	\$ 728.72	\$ 825.00	38

18.00 % ANNUAL PERCENTAGE RATE: the cost of your credit is a yearly rate.

9915.72 FINANCE CHARGE: the dollar amount the credit will cost you.

17287.85 Amount Financed: the amount of credit provided to you or on your behalf.

22603.72 Total of Payments: the amount you will have paid after you have made all payments as scheduled.

Late Charge: If any part of a payment, other than the final payment, is more than 10 days late, you will be charged a late charge equal to 1% of the scheduled payment, but not less than \$12.50.

Prepayment: If you pay off early, you may be entitled to a refund of part of the finance charge.

Security: You are giving us a security interest in the property indicated below:

☒ Access Vehicle(s) ☐ Household Goods ☐ Household Goods & Appliances/Personal Equipment

☐ This Loan is Unsecured ☐ The Goods or Property Being Purchased ☐ Real Estate

☐ Other Property: _____

See your contract documents for any additional information about repayment, default, any required registration in full before the scheduled date, and prepayment delays and penalties.

17287.85	AMOUNT FINANC
9282.86	AMOUNT PAID
NONE	AMT. PD. TO YOU
1,882.65	AMOUNT GIVEN
118.74	AMOUNT PAID TO OTHERS ON YOUR BEHALF
NONE	To Ins. Co. for Life
522.00	To Ins. Co. for Acc.
NONE	To Ins. Co. for Acc.
374.40	To Ins. Co. for Life
8.00	To Public Officials
NONE	To Public Officials
NONE	To Agent for
NONE	To Ins. Co. for Title Insurance
NONE	For Title Bond To
NONE	For Abstract To
1,015.00	To WELLS FARGO
3,420.00	To CHASE
895.00	To WELLS FARGO FINANCIAL BANK
	To
	To

☐ When this was checked, information is contained on attached addendum.
We may be receiving a portion of this amount.

865.00+

3420.00+

1015.00+

9.00+

574.40+

522.00+

116.74+

1582.95+

9282.86=

17287.95*

Closed By

YOUR PROMISE TO PAY AND THE TERMS OF REPAYMENT. To repay your loan, you promise to pay us the amount shown above as Total of Payments which includes interest at the Agreed Rate of Interest Per Year and also includes any other charges shown above in the Itemization of Amount Financed box. You'll pay the Total of Payments to us at our office in installments each month according to the terms of repayment shown directly above.

RATE OF INTEREST. The Agreed Rate of Interest Per Year is the Annual Percentage Rate shown above. The amount of interest is the Finance Charge shown above. Unless this Note and Security Agreement is converted to an interest-bearing loan, the rate of interest per year after maturity until fully paid is also the Annual Percentage Rate shown above.

YOU GRANT US A SECURITY INTEREST. You give us a security interest in your property described below. This property is called collateral. You also give us a security interest in any accessories to and proceeds of the collateral. Accessories are goods included in or attached to the collateral. Proceeds are money or property due to you from the loss, destruction or sale of the collateral. You also give us a security interest in any amount due to you under any credit insurance and extended service contract purchased with this loan and listed in the Itemization of Amount Financed, including any refund of unearned premium for the insurance and unearned charge for the extended service contract. The purpose of this security interest is to protect us if you don't repay your loan described above or if you break any promise made in this Note and Security Agreement.

THE PARAGRAPHS CHECKED BELOW DESCRIBE THE COLLATERAL COVERED BY THIS NOTE AND SECURITY AGREEMENT:

- ☐ (a) All of the household goods and appliances/electronic equipment of every kind now located at the borrower's residence, including all items included in the Federal Trade Commission's Credit Practices Rule (located in the description of the collateral in this Note and Security Agreement) and any other items which are exempt under Minnesota Statutes Section 525.271 and which, in whole or in part, are covered by this Note and Security Agreement.
- ☐ (b) The following property located at the borrower's residence address indicated above:

- ☒ (c) Motor vehicle(s) described as follows:
- | Year | Make | Model |
|------|-------|-------|
| 1985 | LEXUS | RODIO |
| 1988 | VOLVO | V70 |

Serial Number
4S2CN8V384372881
V711V5603K2887020

I understand that some or all of the above property is normally protected by the law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract.

ADDITIONAL TERMS. The additional terms printed on pages 2 and 3 are a part of this Note and Security Agreement, and you are bound by them in the same manner as if they were printed on page 1 of this Note and Security Agreement.

SIGNATURES. If you agree to be bound by the terms of this Note and Security Agreement, please sign your name below. All persons signing this Note and Security Agreement will be fully responsible for paying it in full. By signing below, you are authorizing endorsement of the loan proceeds as shown above in the Itemization of Amount Financed box.

YOU ACKNOWLEDGE THE EXISTENCE OF A SEPARATE ARBITRATION AGREEMENT SIGNED CONCURRENTLY WITH THIS NOTE AND SECURITY AGREEMENT, AND YOU SPECIFICALLY AGREE TO BE BOUND BY ITS TERMS.

SIGN HERE

SIGN HERE

SIGN HERE

COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST

In this Collateral Owner's Grant of a Security Interest, the word you means anyone who signs below. The words we and us refer to the Creditor. To secure all of the Borrower's obligations under this Note and Security Agreement, you give us a security interest in the property you own described in the description of collateral above ("collateral") and you agree that we have rights in the collateral as provided by this Note and Security Agreement. However, you assume no personal responsibility for the payment of any interest owed under this Note and Security Agreement.

SIGN HERE

SIGN HERE

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 445 MINNESOTA ST., ST. PAUL, MN 55101
 CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

TRAN SANG THI
 HAZLETT BART ISAAC
 2291 DOBSON AVE
 ST PAUL MN 55108

99	VOLV	SWV7A	H2670R223
Year	Make	Model	Title NR.
YV1LV56D3X258702D		08/05/03	NO
VIN		Security Date	Rebuilt

RETAIN THIS DOCUMENT - See reverse
 side of this form for removing this lien.

WELLS FARGO FINANCIAL ACCEPT
 INC
 8120 PENN AVE S
 BLOOMINGTON MN 55431-1326

CKJ476

1ST SECURED PARTY

LIEN HOLDER

First Class
 U.S. Postage
PAID
 Permit No. 171
 St. Paul, MN

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 445 MINNESOTA ST., ST. PAUL, MN 55101
 CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

HAZLETT SALLY DUFFY
 4541 FRANCE AVE S #4
 MPLS MN 55410

95	ISU	4WROD	K0620R394
Year	Make	Model	Title NR.
4S2CM58V3S4372981		01/29/03	NO
VIN		Security Date	Rebuilt

RETAIN THIS DOCUMENT - See reverse
 side of this form for removing this lien.

WELLS FARGO FINANCIAL ACCEPT
 8120 PENN AVE S 265
 BLOOMINGTON MN 55431-1326

CXK469

1ST SECURED PARTY

LIEN HOLDER

First Class
 U.S. Postage
PAID
 Permit No. 171
 St. Paul, MN

Wells Fargo Financial Acceptance
3101 West 89th Street
Edina, MN 55435
(952) 920-9270

Fax: (952) 915-6560



August 10, 2004

Ian T. Ball
12 S 6th St Ste 326
Minneapolis, MN 55402

Re: *Bart I Hazlett and Sang T. Tran*
Bky. No. 04-34413-DDO
Acct. No. 37693061

Dear Counselor:

Please be advised that according to our records, insurance coverage has lapsed and/or no current proof of insurance has been provided on the 1995 Isuzu Rodeo VIN# 4S2CM58V3S4372981 and 1999 Volvo V70 VIN# YV11V5603X2587020 owned by the above-referenced Debtor(s). Please be further advised that the amount of the deductible on this insurance cannot exceed \$500. If we are not provided acceptable insurance information on or before August 19, 2004, we may seek relief in the Bankruptcy Court. Thank you for your attention to this matter.

Sincerely,

Wells Fargo Financial Acceptance

By
Ryan Fods

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-34413-DDO
Chapter 7

Bart I. Hazlet and Sang T. Tran,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 1999 Volvo V70 with a vehicle identification number YV1LV5603X2587020 and 1995 Isuzu Rodeo, vehicle identification number 4S2CM58V3S4372981 (collectively, the "Vehicle"). Payments due under the terms of the Contract for the months of July through August 2004 totaling \$1,280.40 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$13,070.13 as of the date hereof and the scheduled value of the Volvo is only \$12,675.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Financial Acceptance has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. United

Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.),
484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 20, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bart I. Hazlet and Sang T. Tran

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34413-DDO

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Ian Tranqair Ball
12 S. 6th St., Ste. 326
Minneapolis, MN 55402

(Trustee)
Michael J. Iannacone
8687 Eagle Point Blvd.
Lake Elmo, MN 55042

(Debtor(s))
Bart I. Hazlet
2291 Doswell Ave.
St. Paul, MN 55108

Sang T. Tran
2291 Doswell Ave.
St. Paul, MN 55108

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 20, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34413-DDO
Chapter 7

Bart I. Hazlet and Sang T. Tran,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Wednesday, October 13, 2004 on the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. §362. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Financial Acceptance to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 1999 Volvo V70, vehicle identification number YV1LV5603X2587020 and 1995 Isuzu Rodeo, vehicle identification number 4S2CM58V3S4372981 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge